

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK A. FREGIA,

Plaintiff,

v.

YUCUI CHEN, et al.,

Defendants.

No. 1:20-cv-01024-ADA-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 40 & 49)

Plaintiff Mark A. Fregia is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 302.

Defendants Gosso and Johnson filed a motion for summary judgment on February 18, 2022. (ECF No. 40.) The motion was not brought on behalf of defendant Chen and does not address any claims brought against that defendant. (ECF No. 40). Plaintiff filed an opposition to the motion on April 21, 2022. (ECF No. 43.) On May 2, 2022, Defendants filed their reply. (ECF No. 44.) On July 1, 2022, the assigned Magistrate Judge entered findings and recommendations recommending Defendants' motion be granted. (ECF No. 49.) Those findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within twenty-one (21) days from the date of service. (*Id.* at 13.)

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1 Plaintiff was granted an extension of time to file objections. (ECF No. 53.) On August
2 10, 2022, Plaintiff filed objections to the findings and recommendations. (ECF No. 54.) On
3 August 24, 2022, defendants Gosso and Johnson filed a reply. (ECF No. 56.)

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B), this Court has conducted a
5 *de novo* review of the case, including Plaintiff's objections. Having carefully reviewed the entire
6 file, the Court finds the findings and recommendations to be supported by the record and proper
7 analysis.

8 Accordingly,

- 9 1. The findings and recommendations entered on July 1, 2022 (ECF No. 49), are
10 adopted in full;
- 11 2. Defendants' motion for summary judgment (ECF No. 40) is granted;
- 12 3. Plaintiff's claim for deliberate indifference to serious medical needs in violation of
13 the Eighth Amendment against defendant Johnson is dismissed without prejudice
14 on the grounds that Plaintiff failed to exhaust his available administrative
15 remedies;
- 16 4. Plaintiff's claim for retaliation in violation of the First Amendment against
17 defendant Gosso is dismissed without prejudice on the grounds that Plaintiff failed
18 to exhaust his available administrative remedies; and
- 19 5. Pursuant to the Court's order (ECF No. 51), the deadline for the remaining
20 Defendant in this case, Yucui Chen, to file dispositive motions is forty-five (45)
21 days from service of this order.

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24 IT IS SO ORDERED.

25 Dated: October 5, 2022

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UNITED STATES DISTRICT JUDGE